Filed 2/24/12 In re Alex R. CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re ALEX R., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ALEX R., Defendant and Appellant.	F062678 (Super. Ct. No. 10JQ0073A) **OPINION**

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Grace Lidia Suarez, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and A. Kay Lauterbach, Deputy Attorneys General, for Plaintiff and Respondent.

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Following a contested jurisdiction hearing, the juvenile court found true allegations set forth in a juvenile wardship petition that appellant Alex R. committed

(1) first degree burglary, a serious and violent felony (Pen. Code, §§ 459, 1192.7, subd. (c), 667.5, subd. (c))[1] for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)) (count 1), (2) receiving stolen property (§ 496, subd. (a)) for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)) (count 2), (3) participation in a criminal street gang, a serious felony (§§ 186.22, subd. (a), 1192.7, subd. (c)) (count 3), and (4) grand theft of a firearm (§ 487, subd. (d)(2)) (count 4).[2] The court granted Alex's motion to dismiss five other counts alleged in the petition pursuant to Welfare and Institutions Code section 701.1. Following the subsequent disposition hearing, the court continued Alex as a ward of the juvenile court and ordered him to serve not less than 180 days in juvenile hall. The court calculated Alex's maximum term of confinement as 18 years and four months.

On appeal, Alex contends (1) the juvenile court abused its discretion when it denied his request for a free transcript of the proceedings, (2) there was insufficient evidence to support the finding that he received stolen property, (3) his maximum term of confinement violated section 654, and (4) there was insufficient evidence to support the true finding on the allegation that counts 1 and 2 were committed for the benefit of a criminal street gang. Finding no merit to Alex's contentions, we affirm.

FACTS

A series of burglaries occurred in Corcoran on or about March 31, 2011.[3] Azucena Garcia-Madrid's iPod was taken from her car, which had its window broken. Savannah Ybarra's car window was broken and her laptop stolen. The driver's side window of John Price Jones's sports utility vehicle was broken and his iPod stolen.

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[1] All undesignated statutory references are to the Penal Code.

[2] Four other juveniles were adjudicated at the jurisdiction hearing, Dominic M., Daniel G., Nathan R., and Israel F. (Nathan R. and Alex R. have different last names.)

[3] All undesignated dates are to the year 2011.

Between one and two a.m. on March 31, Marina Lefridge was talking on her cell phone while sitting in her car, which was parked on the street in front of her house. Seeing some shadows, she did not get out of the car. Two young men came up to the driver's side of the car and tried to open the door. Lefridge slammed the door shut; she was scared and could not figure out how to lock the doors, as the car was new. When the young men attempted to open the driver's side door again, Lefridge pulled it shut. Lefridge believed the young men were puzzled because the door kept closing; she thought they did not realize someone was in the car, as the night was dark, there were no lights on inside the car, and the windows were frosted up. When the two tried to open the door a third time, Lefridge pulled the door shut. By this time, Lefridge was able to lock the doors. The group, which Lefridge thought totaled four to six young men between the ages of 16 and 20 who were wearing dark clothing, began to walk away from the car. As the group left, one young man peered into the car.

Lefridge identified three of the juveniles being adjudicated at the hearing as being present that night, namely Nathan, Dominic, and Alex. Lefridge believed Nathan was the first person who came up to her driver's side window, and Alex tried to open the door. Lefridge had seen the same juveniles she identified in court watching her and her friends play basketball at the Corcoran YMCA the previous evening.

At about 3:40 a.m. on March 31, Jason Proctor went into his attached garage and found all of his garage cabinets open, the garage door up, and his 2009 Chevy four-door, four-wheel drive, pickup truck that had been parked in the driveway gone. Also missing was a set of Corvette keys that were hanging in the garage by the door that led into the house, as well as keys to the truck. A .223 hunting rifle and a box of .223 ammunition were in the back of the truck. As Proctor was on the phone to the police to report the theft, he was told that police had found his truck in front of another house in Corcoran. When he got to the truck, he noticed his garage door opener was missing. Police later

returned to him the two sets of car keys, the garage door opener, ammunition, rifle and some shotgun shells that had been in his garage.

At about 11 p.m. on March 31, Corcoran Police Officer Laura Duran responded to a call that approximately seven to eight male juveniles wearing dark clothing were looking into vehicles in the 1300 block of Hall Avenue in Corcoran. One of the juveniles was described as wearing a black and white checkered jacket and another as possibly carrying a black stick. Officer Duran checked the area, but could not locate the subjects. A citizen advised Officer Velasco, who also responded to the call, that he observed seven to eight subjects wearing red shirts and running southbound. Sometime after 2:30 a.m., Officer Duran was checking the area where the initial call came from when she saw a "dark subject" with a medium build, wearing dark clothing and a beanie cap, leaving a residence at 1312 Hall Avenue. As he opened the door to the house, Officer Duran saw several thin-built males walking back and forth inside the front room. Officer Duran later was dispatched to the location of a white Chevy work truck, which was less than a quarter of a mile from the residence at 1312 Hall Avenue.

Corcoran Police Officer Pedro Castro also responded to 1312 Hall Avenue on March 31, along with Corcoran Police Detective Eric Essman. Detective Essman knocked on the front door while Officer Castro stood at the rear of the house. There was no immediate answer to the knock; the officers heard a lot of movement inside the house. After about five minutes, Angie R. answered the door. The officers told her they needed to determine what males were in the residence and asked to speak to Angie's two juvenile sons, as well as any other subjects in the home. Angie said her two sons were home, but denied that anyone else was there, and consented to a search of the house.

Angie's two sons, Nathan and Henry, were in the living room where police found a laptop computer, a .223 caliber rifle inside a rifle case, a bag of .22 caliber ammunition, and sticks or bats. Officer Castro located Alex and another male juvenile, Daniel, hiding in a utility room, where police found a box of .223 caliber rounds, along with some dark

sweatshirts and three to four beanie caps. An iPod was discovered inside Alex's pants pocket along with some cash.

Officer Castro also found two other male juveniles, Dominic and Israel, in a bedroom that Angie claimed was hers; Dominic was asleep on the bed and Israel was hiding under a dresser. In the bedroom, police found two sets of car keys on the floor, one for a Chevy and the other for a Corvette, and an iPod under the mattress. Dominic admitted he stole the iPod that was located under the mattress from a vehicle. Nathan, who was wearing a black and white checkered shirt-type jacket, admitted to police he stole all of the items located in the living room, but refused to give the details.

Police determined that Proctor was the registered owner of the rifle, which he later identified as his. The laptop was returned to its owner, Ybarra, by matching the serial number and laptop box she provided. Jones identified the 80-gigabyte iPod that was found in Alex's pocket as his by the serial number which was on the original box he provided. Madrid identified an iPod Touch as hers based on its appearance, as it had the same white silicon case as hers and her e-mail messages were stored on the device.

Deputy Probation Officer Damon Parryman, who was assigned to the Kings County Gang Task Force, testified as an expert on gangs. Parryman was familiar with the Nortenos, a criminal street gang with approximately 2,500 members in Kings County. According to Parryman, the Nortenos engage in various patterns of criminal activity, including shooting at inhabited dwellings, shooting from cars, assaults, robbery, burglaries, and various degrees of theft. Parryman was aware of two Nortenos gang members in Kings County who had been convicted of violating sections 246 and 186.22, subdivision (a).

In Parryman's opinion, all of the juveniles at the hearing were part of the Nortenos street gang in Kings County, and the charges being tried were the type of activities that would further and benefit the gang. Specifically, Parryman testified that in his opinion, the following acts would further and benefit the gang's interests: (1) the burglary of

Proctor, including taking his vehicle, weapon, ammunition and car keys; (2) receiving stolen property, including cell phones, rifles, car keys, ammunition and a laptop; (3) possessing items that would be used as burglary tools; and (4) stealing vehicles. Parryman explained that in Kings County, young Nortenos steal vehicles to get around town, as they do not own their own vehicles and do not want to use their parents' cars; they know how long it will take for a vehicle to be reported stolen and the police to enter the vehicle into the system. Home burglaries help the Nortenos because stolen property can be sold and the money used to purchase illegal firearms or other forms of contraband. Stealing a firearm helps a Norteno by giving the person who stole it more credit in the gang and increases the gang's armory for their ongoing battles with their arch enemy, the Surenos, with whom the Nortenos have had numerous gang clashes in which shots were fired.

Parryman had personal contact with Alex, who is from Corcoran, when Alex came in to complete his court-ordered gang registration. Between October 2009 and March 31, Alex had 13 contacts with law enforcement; during each contact, he was with other gang members or associates. Parryman opined that Alex is in fact a Norteno gang member based on the court-ordered gang registration, Parryman's personal contacts with Alex, and Alex's stated desire to not be bunked with southerners when booked into juvenile hall. Parryman opined the other juveniles who were in the home that night, Israel, Dominic, Daniel, and Nathan, were also Norteno gang members. Parryman testified the Nortenos have deemed the Corcoran YMCA as their territory and the YMCA is a hangout for street gangs in Corcoran.

Around December 2010, Officer Castro contacted Alex when responding to a report of a fight. Alex admitted to Officer Castro that he was a Norteno gang member. Other juveniles found in the home, Israel and Dominic, had also admitted gang membership to Officer Castro in the past.

DISCUSSION

I. Request for a Free Transcript

Alex contends the juvenile court abused its discretion when it denied his request for a free reporter's transcript so he could file a motion for a new trial. We disagree.

A. Trial Proceedings

The jurisdictional hearing commenced on May 10. After the prosecution presented its case-in-chief, Alex's trial attorney asked the court to consider a motion to dismiss some of the charges for lack of evidence, in which the attorneys for the other juveniles joined. The court continued the hearing to May 12. On May 12, the court heard and ruled on the motions to dismiss under Welfare and Institutions Code section 701.1. None of the juveniles presented any evidence in defense. The court then heard closing arguments and made its findings. A disposition hearing was set for May 31.

On May 23, Alex's attorney filed a written request "for a full and complete copy of the transcripts of all proceedings in the within action, such transcripts being a *sine non qua* [sic] for the preparation and filing of defendant's motion for new trial." In the attached memorandum of points and authorities, Alex's attorney argued that Alex was entitled to a free transcript because he was indigent and denial of a transcript would violate his right to effective counsel in preparation of a motion for a new trial.

On May 27, the court filed a written order denying the transcript request without prejudice to Alex's right to renew the request in a timely and appropriate manner. In its order, the court stated that Alex failed to specifically identify the proceedings for which he was seeking transcripts, noting the only transcript then contained in the court's file was from the May 10 contested jurisdiction hearing. The court explained that under Welfare and Institutions Code section 800, subdivision (d), an appellant who is unable to afford counsel is entitled to a free copy of the transcript in any appeal, but there was no claim that an appeal had been, or would be, filed. The court noted that while there were rehearing procedures and procedures for petitions for modification that could be pursued,

citing California Rules of Court, rules 5.570 and 5.542, defense counsel had not stated an intention to proceed under either of these vehicles. Moreover, the court stated it had only received the request that day and it would be impossible to have a copy of the May 10 reporter's transcript prepared and forwarded by May 27, which it stated was the requested date for receipt of the transcript.

At the May 31 disposition hearing, the court first revisited the matter of Alex's request for a reporter's transcript, noting the receipt of Alex's attorney's written request and its written order denying it "for several reasons, not the least of which you didn't provide me with any indication as to what you felt you needed the transcript for other than the fact to make a motion for a new trial." The court further explained that the transcript of the May 10 hearing was filed on May 11, and Alex's attorney did not indicate in his declaration that he had reviewed the transcript, which may have given him the information he needed.[4]

In response, Alex's attorney moved for a continuance of the disposition hearing so that he could "file a new motion to get a transcript," which he needed to "file for a new trial." When Alex's attorney started to say what he was specifically interested in, the court cut him off, stating that "what you tell me you're interested in today should have been contained in your declaration." The court noted that Alex's attorney had participated in every aspect of the trial, objected at every opportunity and "then some," and should have been aware of any grounds for a new trial motion. The court further noted the attorney's declaration did not indicate he had looked at Alex's file, because if he had, he would have found the first half of the transcript which he could have reviewed.

When the court asked Alex's attorney if he wanted to make an oral motion for a new trial, Alex's attorney responded that he did, but he wanted a continuance so he could

[4] While the court referred to a declaration from Alex's attorney that presumably was filed with the request for a transcript, the declaration is not in the appellate record.

file the motion and better prepare for disposition. Alex's attorney stated there were some developments relating to Alex that may not relate to the other juveniles, namely new charges had been filed against Alex and the attorney wanted to determine if those charges should have been joined with this case. Alex's attorney further stated he did not have a chance to review the disposition and had some questions, including whether the charges found true qualified as strikes.

The prosecutor opposed the request, arguing none of the statements was a ground for a new trial. Alex's attorney asserted that grounds for a new trial always include a violation of due process, which he thought was present here because the prosecutor raised an aiding and abetting theory for the first time in closing arguments, which theory had not been proven. After ascertaining that there was nothing else Alex's attorney wanted to add, the court denied the motion for a continuance to file a motion for a new trial. Alex's attorney then moved for a continuance of the disposition hearing so he could more fully review the probation report. The court denied the motion.

B. Analysis

Alex asserts the court abused its discretion in denying his request for a transcript because (1) the court was wrong when it stated in its written ruling that he was not entitled to make a motion for new trial because such a motion does not exist in juvenile law, and (2) the denial was capricious, because the transcript of the first day of the hearing had been prepared and filed, and preparation of the second day's transcript would have caused only minimal delay.

An indigent criminal defendant must be provided a free transcript of prior proceedings where the transcript is necessary for an effective defense or appeal. (*Britt v. North Carolina* (1971) 404 U.S. 226, 227; *People v. Hosner* (1975) 15 Cal.3d 60, 64-65 (*Hosner*).) A defendant in a retrial is presumed to have a need for a full transcript of the prior proceedings that resulted in a mistrial, since the transcript of the first trial would

contain testimony pertaining to the same charges at issue in the retrial. (*Hosner, supra,* 15 Cal.3d at p. 66; *People v. Markley* (2006) 138 Cal.App.4th 230, 241 (*Markley*).)

Such a presumption, however, does not apply to an indigent defendant's request for the trial transcript in order to prepare a motion for new trial. "An indigent defendant 'is not entitled, as a matter of absolute right, to a full reporter's transcript of his trial proceedings for his lawyer's use in connection with a motion for a new trial; but, since a motion for a new trial is an integral part of the trial itself, a full reporter's transcript must be furnished to all defendants . . . whenever necessary *for effective representation by counsel at that important stage of the proceeding.*' [Citation.] There are no mechanical tests for deciding when the denial of transcripts for a motion for new trial is so arbitrary as to violate due process or to constitute a denial of effective representation. Each case must be considered on its own peculiar facts and circumstances." (*People v. Bizieff* (1991) 226 Cal.App.3d 1689, 1700 (*Bizieff*), citing *People v. Lopez* (1969) 1 Cal.App.3d 78, 83, italics added.)

In determining the need for a trial transcript, two relevant factors to consider are the value of the transcript to the defendant in connection with the proceeding for which it is sought, and the availability of alternatives that would fulfill the same function as a transcript. (*Hosner, supra,* 15 Cal.3d at pp. 64-65.) The court may deny a motion for free transcripts to prepare a new trial motion where the defendant fails to show a particularized need for the transcripts. (*Bizieff, supra,* 226 Cal.App.3d at p. 1702.)

Here, Alex requested a transcript of the proceedings so he could prepare a motion for a new trial. As Alex points out, while such a motion is not authorized in juvenile delinquency proceedings, it is tantamount to motions for reconsideration or modification under Welfare and Institutions Code section 775 or 778. (*In re Kenneth S.* (2005) 133 Cal.App.4th 54, 62; *In re Steven S.* (1979) 91 Cal.App.3d 604, 606-607.) Alex asserts the court should have recognized he was bringing his request for a reporter's transcript so he

could bring one of these motions and erred in denying the request on the basis that he sought a motion for a new trial instead.

Alex ignores, however, the requirement that he show a particularized need for the transcripts before he is entitled to them. Alex provided no explanation below, and provides none on appeal, as to why he needed the transcripts other than to generally state that he needed them to move for a new trial or modification. The court thus had discretion to deny Alex's attorney's request, as it did, because he failed to demonstrate any particularized need for them. Moreover, as the juvenile court pointed out, a partial transcript was available in the court file. The record does not indicate why his attorney could not have reviewed that transcript; if the transcript was inadequate to address the issues he wanted to raise in a modification motion, he should have specified in his request what additional transcripts were needed and why. (See *Bizieff, supra,* 226 Cal.App.3d at pp. 1703-1704.) Since he failed to show a particularized need for the transcripts, that the May 12 transcript could have been completed with minimal delay did not compel the juvenile court to grant the request and it did not abuse its discretion in denying it.

II. Receiving Stolen Property

The wardship petition alleged in count 2 that Alex was in receipt of stolen property, namely a "cell phone, rifle, car keys, ammunition and a laptop computer." As the evidence at the hearing showed, the rifle, car keys and ammunition were taken during the burglary alleged in count 1. At disposition, the juvenile court found that count 2 was "not 654" to the burglary in count 1 because "the possession of the property in that count was different and separate from the property taken from the burglary in Count 1, specifically, one of them included a laptop which was taken in a different theft offense."

Alex contends the true finding on count 2 for receiving stolen property must be reversed because there was insufficient evidence to prove that a laptop or cell phone was actually stolen. Our duty on a challenge to the sufficiency of the evidence is to review the whole record in the light most favorable to the judgment for credible, reasonable, and

substantial evidence of solid value that could have enabled any rational trier of fact to have found the defendant guilty beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318; *People v. Prince* (2007) 40 Cal.4th 1179, 1251 (*Prince*).) That standard applies to circumstantial and direct evidence alike and requires us to presume in support of the judgment the existence of every fact a reasonable trier of fact reasonably could have deduced from the evidence. (*Prince*, *supra*, at p. 1251.)

Alex is correct that there was no evidence that a cell phone was stolen. Instead, the evidence showed that Jones's iPod and Madrid's iPod Touch were both stolen and recovered, the first from Alex's pocket and the second from under the mattress in one of the bedrooms. The evidence did show, however, that the laptop recovered from the home was stolen. Ybarra testified her laptop was stolen and Corcoran police later returned it to her; she was able to identify the laptop by matching the serial number and box, both of which she had in her possession. Officer Castro testified that a laptop computer was found in the home next to a mattress inside the living room. A Community Service Evidence Technician for the Corcoran Police Department, Jimmy Roark, testified that the laptop computer found at the home was returned to the "rightful owner" when the owner gave the serial number to the officers in the investigation.

Based on this evidence, the juvenile court could find, as it did, that Ybarra's laptop was the same laptop found in the home, and therefore the recovered laptop was stolen. While Roark did not identify the owner by name, a reasonable inference can be drawn that the owner was in fact Ybarra, who testified it was stolen, as she subsequently received it from the Corcoran police by producing the original packaging and serial number. The insufficiency of the evidence argument here simply asks us to reweigh the facts. That we cannot do. (*People v. Bolin* (1998) 18 Cal.4th 297, 331-333.)

III. Section 654

When a juvenile court sustains criminal violations resulting in an order of wardship (Welf. & Inst. Code, § 602) and removes a youth from the physical custody of

his or her parent or custodian, it must specify the MTPC, i.e., the maximum term of imprisonment an adult would receive for the same offense(s). (Welf. & Inst. Code, § 726.) Welfare and Institutions Code section 726 permits the juvenile court, in its discretion, to aggregate terms, both on the basis of multiple counts, and on previously sustained wardship petitions in computing the MTPC. (*In re David H.* (2003) 106 Cal.App.4th 1131, 1133 (*David H.*)) When aggregating multiple counts and previously sustained petitions, the maximum confinement term is calculated by adding the upper term for the principal offense, plus one-third of the middle term for each of the remaining subordinate felonies and one-third of the maximum term for the remaining subordinate misdemeanors. (Welf. & Inst. Code, § 726; § 1170.1, subd. (a); *In re Deborah C.* (1981) 30 Cal.3d 125, 140; *In re Eric J.* (1979) 25 Cal.3d 522, 536-538.)

Here, the juvenile court determined the MTPC to be 18 years and four months calculated as follows: (1) count 1 – the six-year mid-term for the burglary plus 10 years as it qualified as a violent felony under section 667.5, subdivision (c); (2) count 2 – a consecutive eight months for the receipt of stolen property plus one year for the section 186.22, subdivision (b)(1) gang enhancement; and (3) count 4 – a consecutive eight months. The court imposed and stayed a two-year term for the substantive gang offense in count 3 pursuant to section 654. The court found that counts 2 and 4 should not be stayed pursuant to section 654 because: (1) count 2 involved possession of property that was different from the property taken in the burglary, namely the laptop; and (2) the stolen firearm in count 4 was taken from the truck which was parked in the driveway of Proctor's house, not in his garage.

Alex contends he could not be punished for both the burglary and possessing items stolen in the course of the burglary. He asserts that since the burglary, theft of the truck and rifle, and possession of the car keys and ammunition were incidental to one objective, theft, and he harbored a single intent, to steal, the court was required to stay his terms on counts 2 and 4 pursuant to section 654.

Section 654 precludes multiple punishment for a single act or omission, or an indivisible course of conduct. (*People v. Deloza* (1998) 18 Cal.4th 585, 591.) The section is applicable in juvenile court proceedings in which the court elects to aggregate the periods of physical confinement on multiple counts or multiple petitions pursuant to Welfare and Institutions Code section 726. (*In re Billy M.* (1983) 139 Cal.App.3d 973, 978.)

"Whether a course of conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the 'intent and objective' of the actor. [Citation.] If all of the offenses are incident to one objective, the court may punish the defendant for any one of the offenses, but not more than one. [Citation.] If, however, the defendant had multiple or simultaneous objectives, independent of and not merely incidental to each other, the defendant may be punished for each violation committed in pursuit of each objective even though the violations share common acts or were parts of an otherwise indivisible course of conduct." (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 267-268; *People v. Martin* (2005) 133 Cal.App.4th 776, 781 (*Martin*).)

In addition, "'a course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment. [Citations.]' [Citations.] This is particularly so where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken." (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935.) "Thus, a finding that multiple offenses were aimed at one intent and objective does not necessarily mean that they constituted 'one indivisible course of conduct' for purposes of section 654. If the offenses were committed on different occasions, they may be punished separately." (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1253.)

"Whether multiple convictions are part of an indivisible transaction is primarily a question of fact. [Citation.] We review such a finding under the substantial evidence test

[citation]; we consider the evidence in the light most favorable to respondent and presume the existence of every fact the trier could reasonably deduce from the evidence." (*Martin, supra,* 133 Cal.App.4th at p. 781.) Where, as in this case, the trial court imposes consecutive sentences, it impliedly finds the defendant entertained multiple criminal objectives and we must determine whether such a finding is supported by substantial evidence. (*Gaio, supra*, 81 Cal.App.4th at p. 935.)

We begin with the term imposed on count 4. Alex contends consecutive terms were improperly imposed for the burglary of Proctor's home in count 1 and the theft of his firearm in count 4, since both offenses occurred on the same night, he and the other juveniles entered the garage with the intent to steal, they stole the keys to Proctor's truck from the garage, and used the keys to steal the truck and burglarize it.

Separate entries, even if conducted in the course of the same crime spree at the same location, are separately punishable. (See, e.g. *People v. Bowman* (1989) 210 Cal.App.3d 443, 448-449 [consecutive sentences permissible where defendant broke into a car dealership, stole supplies from the office and stole electronic equipment and other interior items from various motor homes and vehicles].) Here, Alex committed separate entries into Proctor's garage and his truck, with separate intents even though the offenses presumably were committed within minutes of each other. While Alex and the other juveniles could have merely burglarized the truck, which was parked in the driveway in front of the garage, they decided to go into the garage, after gaining access to it either by taking the garage door opener from the truck or some other means, rummaged through the garage cabinets, and took shotgun shells that were stored there as well as the keys to the Corvette and the truck. At that point, they had completed the entry required for the burglary and could have departed with the stolen property they had taken from the garage. Instead, they went back to the truck and drove away. At some point, the juveniles removed the rifle from the truck and took it to the home on Hall Avenue. Even though the two offenses shared common acts or may seem to be part of an otherwise

indivisible course of conduct, the offenses were temporally separated as to afford Alex the opportunity to reflect and form the independent intent to commit burglary of the garage and theft of the rifle.

Section 654 also does not prohibit multiple punishment on count 2, which alleged receipt of property stolen during the burglary, namely the car keys and ammunition, as well as the theft of the rifle. This is because count 2 also was based on the receipt of property not taken from Proctor, namely the laptop computer taken from Ybarra. Since the laptop was from a separate crime that occurred in a different location and time, section 654 does not prohibit multiple punishment for it.

IV. The Gang Enhancement

Alex argues the evidence was insufficient to support the section 186.22, subdivision (b) findings. We are not persuaded.

Section 186.22, subdivision (b)(1) "requires that the crime be committed (1) for the benefit of, (2) at the direction of, *or* (3) in *association* with a gang." (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1198 (*Morales*).) The trier of fact reasonably can infer the requisite association from the fact the defendant committed the charged crimes in association with fellow gang members. (*Ibid.*) The "specific intent" prong of the statute does not require a specific intent to promote, further, or assist in any criminal conduct other than the criminal conduct constituting the crime currently being committed. "By its plain language, the statute requires a showing of specific intent to promote, further, or assist in '*any* criminal conduct by gang members,' rather than *other* criminal conduct." (*People v. Romero* (2006) 140 Cal.App.4th 15, 19.) "Commission of a crime in concert with known gang members is substantial evidence which supports the inference that the defendant acted with the specific intent to promote, further or assist gang members in the commission of the crime." (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 322; see also *Morales*, *supra*, 112 Cal.App.4th at p. 1198.) "[S]pecific intent to *benefit* the gang is not required." (*Morales*, *supra*, 112 Cal.App.4th at p. 1198.)

"[T]he typical close case is one in which one gang member, acting alone, commits a crime." (*Morales, supra*, 112 Cal.App.4th at p. 1198.) This is not a close case. At a minimum, there were five gang members, including Alex, involved in a course of criminal activity that night, including the burglary of Proctor's house, various vehicle break-ins, and the receipt of stolen property. The juvenile court reasonably could infer that Alex, in joining in this activity with other gang members, acted "in association with any criminal street gang" and did so "with the specific intent to promote, further, or assist in any criminal conduct by gang members." (§ 186.22, subd. (b)(1).)

Alex's reliance on *People v. Ramon* (2009) 175 Cal.App.4th 843 is misplaced. In *Ramon* the defendant and his co-defendant were stopped in a stolen truck with an unregistered firearm under the driver's seat. The defendant was convicted of four crimes, which the jury found were committed for the benefit of, at the direction of, or in association with a criminal street gang, and with the specific intent to promote, further, or assist in criminal conduct by gang members. (*Ramon, supra*, 175 Cal.App.4th at p. 846.) A gang expert testified that because the defendants were gang members and they were stopped in the heart of gang territory, the circumstances of the present crimes would benefit their gang. (*Id.* at pp. 847-848, 849.) This court found the expert's testimony insufficient to support the finding that the defendant committed the crimes "with the specific intent to promote, further, or assist in any criminal conduct by gang members." (*Ramon, supra*, 175 Cal.App.4th at p. 853.) We explained: "The facts on which [the expert] based his testimony were insufficient to permit him to construct an opinion about Ramon's specific intent in this case. His opinion, therefore, cannot constitute substantial evidence to support the jury's finding on the gang enhancement." (*Ramon, supra*, 175 Cal.App.4th at p. 852.)

In the present case, however, once the court had evidence to convince it that Alex and the other juveniles at the hearing were gang members and that the crimes the gang commits include burglaries and various thefts, including stealing cars, it might well have

found the section 186.22, subd. (b)(1) allegations to be true without any further expert testimony. The court hardly needed Parryman to tell it his opinion about whether the crimes of burglary and receipt of stolen property were committed for the benefit of the gang. Moreover, he was never asked whether Alex or the other juveniles acted "with the specific intent to promote, further, or assist in any criminal conduct by gang members" (§ 186.22, subd. (b)(1).) Substantial evidence supports the court's section 186.22, subdivision (b)(1) findings.

DISPOSITION

The judgment is affirmed.

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Gomes, Acting P.J.

WE CONCUR:

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Poochigian, J.

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Detjen, J.